

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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FIRST DEPUTY

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DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
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FORESTRY AND WILDLIFE
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
FINANCE

Friday, February 21, 2020
12:00 PM
State Capitol, Conference Room 308

In consideration of
HOUSE BILL 2578, HOUSE DRAFT 1
RELATING TO PUBLIC LANDS

House Bill 2578, House Draft 1 proposes to: authorize the designation of areas or regions of public lands classified as commercial, industrial, hotel, apartment, motel or resort use and the establishment and implementation of guidelines for the redevelopment of such areas or regions; add a severability clause; change the effective date to July 1, 2050 to encourage further discussion; and make technical non-substantive amendments for the purposes of clarity, consistency, and style. PART III of the measure proposes to establish Waiakea Peninsula Redevelopment District in Hilo, Hawaii. PART IV proposes to amend Section 171-6, Hawaii Revised Statutes (HRS), to increase the amount of rent credits for leases of public lands that require substantial demolition or infrastructure improvement costs in order to for the lessee to utilize the premises. **The Department of Land and Natural Resources (Department) opposes all parts of this measure, except PART IV relating to rent credits to lessees who incur significant demolition or infrastructure costs.**

There are a number of long-term leases of public lands in the Waiakea Peninsula area originally entered into in the 1940s that have expired in recent years. Some of these leases were used for hotels, and significant hotel improvements were constructed on the premises during the lease term. In some cases, the leasehold improvements have exceeded their useful life and require costly demolition in the range of \$8-10 million for a single property. However, the lease forms used for these leases did not require the lessee to remove the improvements at the expiration of the lease term. As a result, the demolition cost falls on the State unless the State can pass the cost on to a future lessee who undertakes redevelopment of the land. One alternative would require a significant commitment of public funds at a time when critical priorities are competing for a limited amount of resources. Furthermore, simply passing the responsibility to a

prospective lessee to assume such high costs with no avenue for relief will significantly deter demand for the property, reducing the likelihood of a successful development.

Additionally, the Department is currently conducting planning for projects to develop State lands for resort, commercial, industrial, and other business or residential use on various islands, for the purpose of generating income to support the Department's resource management and protection programs. However, substantial investments in infrastructure including drainage, sewer, water, electricity, and other utilities will be required to facilitate development of the lands with costs in the tens of millions of dollars. As with the previous scenario, rather than rely solely on public funds, the State seeks to defer, either whole or in part, the infrastructure and other development costs of these lands on to a future lessee of the lands. PART IV of this measure would facilitate that objective, while also helping to ensure the long-term success of projects that benefit the Department and the State as a whole.

The remaining provisions of the measure are intended to promote redevelopment of the Waiakea Peninsula area. Under Chapter 171, HRS, the Board of Land and Natural Resources (Board) is authorized to issue leases up to a maximum term of 65 years. Section 171-32, HRS, provides that it is the policy of the State to issue leases by public auction. As the preamble to this bill indicates, at the end of their lease terms, lessees have little incentive to invest in improvements to their leasehold properties because the leases cannot be extended further. Rather, new leases of the lands must be issued pursuant to the public auction process. As a result, the properties frequently fall into disrepair.

House Bill 2578, House Draft 1 seeks to promote the redevelopment of public lands in commercial, industrial, hotel, apartment, motel or resort use. The redevelopment districts would have their own nine-member planning committees to act as the policy-making body for the district. In addition to preparing redevelopment plans for the district, the planning committee would have authority to renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the district. The planning committee would also be empowered to reduce or waive the lease rental on any lease of public land for any project in the district that requires substantial improvements, provided that the reduction or waiver shall not exceed one year. The measure would further authorize the planning committee to enter into development agreements with a developer for any project contained in a development plan, and specifies the contents of the development plan.

The bill designates the Waiakea Peninsula Redevelopment District in Hilo as a redevelopment district under the measure. This area constitutes the Department's primary hotel/resort landholdings on Hawaii Island. The Department has been working with the private sector lessees and permittees to move Banyan Drive buildings on State land into redevelopment in phases. Key state parcels in which the Department is engaged in redevelopment of Banyan Drive include:

- 1) Hilo Hawaiian Hotel: ground lease from the Department; renovated.
- 2) Hilo Bay Café (former Nihon restaurant site): ground lease from the Department; renovated.

- 3) Grand Naniloa Hotel: ground lease from the Department; \$20 million in renovations completed in 2018.
- 4) Golf Course: part of Grand Naniloa ground lease from the Department; requires participation of lessee for redevelopment.
- 5) Uncle Billy's: closed in 2017 by the Board; under Revocable Permit (RP) to Tower Development, Inc. (TDI), who is an affiliate of the lessee of the Grand Naniloa; On March 7, 2018, the Department posted a request for interest (RFI) on its website as well as on the website of the State Procurement Office regarding the potential demolition of existing structures and reconstruction of a hotel on the former Hilo Bay Hotel site. Notice of the RFI was additionally published in several newspapers in the State on March 14, 2018 with a response deadline of April 30, 2018. One response (from TDI) was received with a proposal to substantially demolish and reconstruct a branded hotel on the site consisting of approximately 125 guest rooms, fitness room, appropriate back of house spaces and food and beverage venue. TDI additionally proposed to contribute \$1.5 million toward demolition costs (projected by the Department's consultants to exceed \$8 million in total). At its meeting of December 13, 2019, the Board authorized the publication of a Request for Qualifications (RFQ) / Request for Proposals (RFP) for the demolition, renovation, or partial demolition and partial renovation of the hotel under a new long-term lease. The Department is in the process of finalizing the RFQ/RFP documents for publication.
- 6) Country Club: under RP. At its meeting of December 13, 2019, the Board authorized the publication of an RFQ / RFP for renovation of the hotel under a new long-term lease. The Department is in the process of finalizing the RFQ/RFP documents for publication.
- 7) Reed's Bay Resort Hotel: under RP; has some remaining useful life.

Since 2014, the Department has spent approximately \$524,500 from the Special Land and Development Fund (SLDF) on consultant services and studies dedicated to the public lands at Banyan Drive.

- One consultant prepared a market study on tourism to determine if the area could support a new hotel, as well as studies on sea level rise, the viability of master leasing multiple parcels in the area, and the remaining useful life of existing structures on expiring lease premises.
- Another consultant conducted a much more detailed architectural and engineering study on whether existing improvements on the expired lease premises should be demolished or rehabilitated.
- Another consultant recently completed a study on the cost of securing the necessary permitting for demolishing the improvements on the expired leases and completing the demolition.
- Additionally, the Department procured an engineering consultant to assist in reviewing the renovation plans for the Grand Naniloa Hotel.

- Apart from the fees for consultant services, a significant amount of staff time has been invested in planning for the area including attendance at the Banyan Drive Hawaii Redevelopment Agency (BDHRA) meetings.

The County of Hawaii (County) and the State have cooperated, and should continue to cooperate, in planning for redevelopment at Banyan Drive.

As noted above, the measure includes a provision allowing the planning committees to reduce or waive the lease rental on any lease of public land for any project in the district that requires substantial improvements, provided that the reduction or waiver shall not exceed one year. The Department already has authority under Section 171-6, HRS, to waive up to one year of ground rent for new leases that require substantial improvements. As noted above regarding Uncle Billy's, TDI (the sole responder to the RFI) indicated it would only be able to absorb about \$1.5 million of the State's estimated \$8-10 million in demolition costs for the shuttered hotel. The Department has therefore been exploring different ways to promote redevelopment in the Banyan Drive area.¹

In addition, the Department identifies the following issues with respect to this measure:

The bill creates an additional layer of bureaucracy in government

The bill provides that the Legislature may designate an area of public lands as a redevelopment district. Upon such designation, a nine-member planning committee is to be established as a policy-making board for the district. The planning committee, who serves without compensation, then appoints an administrator for the district who is to be compensated. The planning committee may hire additional staff as well.

With respect to Banyan Drive in Hilo, the bill would create a new layer of redevelopment process in addition to the task force and the BDHRA: the Waiakea Peninsula Redevelopment District and a planning committee to serve as a policy-making board for the district. In addition to the administrator, the planning committee would likely require a secretary and perhaps more staff for proper administration, as well as office equipment, supplies, and travel expenses for the nine committee members. There will be added expense for the committee to comply with Chapter 92, HRS, sunshine law requirements. Further, the Committee's actions may be subject to contested case hearings and appeals. A conservative budget for such a planning committee, including payroll, fringe benefits, hearing officer fees, and other costs and expenses, would be \$500,000 annually. The bill makes an unspecified general fund appropriation to the Waiakea Peninsula Redevelopment District revolving fund, and then authorizes an unspecified appropriation out of the fund for Fiscal Year 2020-2021 for purposes of PART III of the measure. Additional funds would be made available to the planning committee through the Department's lease revenues in the designated district.

¹ Last legislative session, the Department made a capital improvement project (CIP) request in House Bill 1259, Senate Draft 1, for a general fund appropriation of \$2 million last fiscal year and \$4 million this fiscal year for demolition of the dilapidated improvements of the former Uncle Billy's Hotel. The bill did not pass.

The bill proposes an unnecessary, bureaucratic addition to the Department's operations. As explained above, the Department has been working with the BDHRA regarding plans for the Banyan Drive area. Additionally, as mentioned above, the Department has procured consultants for Banyan Drive to analyze market trends, and explore options for redevelopment and rehabilitation of specific parcels or areas. After the 2013 legislative session, former Governor Abercrombie approved the formation of a Banyan Drive Task Force that met a number of times to discuss many of the issues covered by the bill as they relate to the Banyan Drive area. The task force members included representatives from local businesses, the former executive director of the Big Island Visitors Bureau, the executive director of the 'Imiloa Astronomy Center of Hawaii, and representatives from the Hawaii County Mayor's Office and state legislators also attended the meetings. This informal task force worked well and at limited expense to the State.

There are practical problems with the bill

As noted above, the measure allows the Legislature to designate redevelopment districts on public lands. As defined in Section 171-2, HRS, public lands exclude lands used as roads and streets. While the State owns some contiguous parcels in the Banyan Drive area of Hilo, it does not own or manage the roads, which often include utility lines and other infrastructure. Accordingly, to the extent the bill seeks to improve infrastructure in a given area, a redevelopment district designated by the Legislature would likely not include important infrastructure components. Rather, the district would be confined to the particular parcels under the Department's management.

The Department relies on the revenues from leases of public lands to fulfill its fiduciary duties

The bill proposes to deposit 50% of the revenues, income and receipts of the Department from the public lands in the Waiakea Peninsula Redevelopment District into the District's revolving fund. These lands are ceded and the Office of Hawaiian Affairs is currently receiving 20% of the revenues and is seeking to increase its share above the \$15.1 it receives annually. Neither this bill nor the redevelopment agency bills relieve the Department of the lease management duties. Therefore, if these measures were all to pass and become law, the Department would be left in the very unfortunate situation of having to manage all of those leases (bill, collect, inspect, procure and pay for professionals for rental and reopening valuations) but receive nominal revenue in return.

The Department and the Board are responsible for managing approximately 1.3 million acres of public lands comprising sensitive natural, cultural and recreational resources. The Department's responsibilities include managing and maintaining the State's coastal lands and waters, water resources, conservation and forestry lands, historical sites, small boat harbors, parks, and recreational facilities; performing public safety duties (e.g., flood and rockfall prevention); issuing and managing leases of public lands (agriculture, pasture, commercial, industrial, and resort leases); maintaining unencumbered public lands; and enforcing the Department's rules/regulations.

To properly perform these fiduciary duties, the Board determined that the Department should utilize a portion of the lands it manages to generate revenues to support the Department's

operations and management of public lands/programs. Annual lease revenues currently support the SLDF, with revenues coming primarily from leases for commercial, industrial, resort, geothermal and other renewable energy projects.

The SLDF is a critical and increasingly important funding source for various divisions within the Department to deal with emergency response to natural catastrophes such as fire, rockfall, flood or earthquake and hazard investigation and mitigation. The SLDF also is critical for staff support of various programs and funding conservation projects on all state lands. It has also become an important source of State match for federally funded endangered species and invasive species initiatives that otherwise would not go forward. The Department opposes transferring funds from the SLDF to planning committees formed under this measure for redevelopment purposes.

The authority to construct, improve, renovate and revitalize areas within the counties is already authorized under Section 46-80.5 and Chapter 53, HRS.

The bill seeks to redevelop the infrastructure and facilities within designated redevelopment districts. However, the bill is unnecessary because there are already existing laws and ordinances that provide the process and financing to make such improvements, as evidenced by the County of Hawaii's creation of BDHRA under Chapter 53, HRS. The measure appears to recognize the ability of a Chapter 53 agency to assist in the redevelopment of the Banyan Drive area, but goes too far in delegating authority to such an agency without oversight by the Board to negotiate and enter into a development agreement with a developer for commercial, business, or hotel or resort uses on public lands within a redevelopment area. Moreover, the measure does not explain how a Chapter 53 agency would coordinate with the Waiakea Peninsula Redevelopment District planning committee in formulating a development plan for the area. This could lead to conflicting development goals being established by the planning committee and Chapter 53 for the same lands. In dealings between the Department and BDHRA to date, it has been understood that BDHRA's role would be to develop a plan for the area and possibly assist in streamlining the County zoning and entitlement process for any redevelopment.

Section 46-80.5, HRS, authorizes the various counties to enact ordinances to create special improvement districts for the purpose of providing and financing such improvements, services, and facilities within the special improvement district as the applicable county council determines necessary or desirable to restore or promote business activity in the special improvement district. This is the same purpose sought by this bill.

Under the authority of Section 46-80.5, HRS, the County of Hawaii, as an example, enacted Chapter 12 of the Hawaii County Code, which authorizes the County to create improvement districts to construct new, or improve existing infrastructure and facilities, including roadways and utility infrastructure and improvements. It should also be noted that the responsibilities for maintaining such improvements within the proposed redevelopment districts are already vested with the County. Most, if not all, of the public roadways and utility infrastructure within any potentially designated district boundaries have been dedicated to the County.

Finally, Chapter 171, HRS, limits the amount of rent reduction or waiver that a lessee of public lands can receive for redeveloping or improving public lands to one year's rent for land leased for resort, commercial, industrial or other business use. In many cases, a rent reduction or waiver equal to one year of ground rent would be an insufficient incentive to induce a developer to invest in the demolition of aged improvements on and redevelopment of public land, or in the provision of basic infrastructure necessary to facilitate the further development of unimproved public land. The Department supports PART IV of this measure that seeks to authorize the Board to approve a rent reduction or waiver for up to twenty years not to exceed the amount of the lessee's total expenditures for demolition of improvements or provision of infrastructure.

Thank you for the opportunity to comment on this measure.

DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
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STATE OF HAWAII
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DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

To: The Honorable Sylvia Luke, Chair;
The Honorable Ty J.K. Cullen, Vice Chair;
and Members of the House Committee on Finance

From: Rona M. Suzuki, Director
Department of Taxation

Re: **H.B. 2578 H.D. 1, Relating to Public Lands**

Date: Friday, February 21, 2020

Time: 12:00 P.M.

Place: Conference Room 308, State Capitol

The Department of Taxation (Department) appreciates the intent of this measure and provides the following comments regarding H.B. 2578, H.D. 1.

Among other things, this measure exempts the costs of construction work or improvements of a redevelopment project from general excise and use taxes. The House Committee on Water, Land, & Hawaiian Affairs amended the measure by adding a severability clause and defecting the effective date to the later of the date that the county of Hawaii repeals the Banyan Drive Hawaii redevelopment agency, or July 1, 2050.

Section 11, which creates a new GET exemption, should be clarified. It appears that the intent is to exempt gross receipts from "contracting" related to a redevelopment project. Because the term "contracting" is already defined in section 237-6, Hawaii Revised Statutes (HRS), and include the activities described in "construction of work or improvements of a redevelopment project," the Department recommends using the term "contracting." In addition, the Department suggests adding a GET exemption that corresponds to the use tax exemption in Section 12 (see analysis below). As such, the Department suggests Section 11 to read as follows:

§237- Redevelopment project. (a) This chapter shall not apply to amounts received for:

- (1) Contracting relating to a redevelopment project that is part of the redevelopment plan adopted by a local redevelopment agency pursuant to chapter 53; and
- (2) Sale of materials, parts, or tools used in contracting as described in paragraph (1).

(b) For the purpose of this section, "local redevelopment agency", "redevelopment plan", and "redevelopment project" shall have the same meaning as defined in section 53-1.

Section 12 amends the use tax under chapter 238, HRS, by exempting from the tax “[t]he use of material, parts, or tools imported or purchased by a person licensed under chapter 237 that are used for the construction of work or improvements of a redevelopment project as defined in section 237-___.” The Department notes that no corresponding exemption for the purchase of materials and supplies exists in chapter 237, HRS, or Section 11 as currently written. Hence, an item purchased locally would be subject to GET whereas an item imported from an out-of-state unlicensed seller would be exempt from use tax. To resolve these issues, the Department suggests amending Section 12 to correspond to with its suggested amendment to Section 11 as follows:

(11) The use of materials, parts, or tools imported or purchased by a licensed seller under chapter 237 that are used in contracting relating to a development redevelopment project that is part of the redevelopment plan adopted by a local redevelopment agency pursuant to chapter 53.

For the purpose of this paragraph, “local redevelopment agency”, “redevelopment plan”, and “redevelopment project” shall have the same meaning as defined in section 53-1.

The Department suggests including a provision that requires the local development agency certify and notify the Department as to the amounts that may be exempted under the new GET exemption. This will assist the Department in checking compliance with the requirements. The Legislature may also consider removing tools from the tax exemptions because unlike materials and supplies, tools have a useful life beyond the single project for which they are purchased.

Finally, the Department respectfully requests that Section 11 and 12 be made effective no earlier than January 1, 2021. This will allow sufficient time to make the necessary form and computer system changes.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE**

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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
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OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 2578, H.D. 1

**February 21, 2020
12:00 p.m.
Room 308**

RELATING TO PUBLIC LANDS

The Department of Budget and Finance offers comments on House Bill (H.B.)
No. 2578, H.D. 1.

H.B. No. 2578, H.D. 1: establishes a framework to identify areas of public lands that are classified as commercial, industrial, resort, and hotel parcels in need of revitalization; provides for redevelopment of the parcels; creates a nine-member planning committee for each redevelopment district to provide policy direction and prepare a redevelopment plan; authorizes a local redevelopment agency to contract with a developer for construction of non-residential projects within a redevelopment area; establishes a revolving fund for each redevelopment district that would generate revenues through 50% of the income, revenues and receipts from the public lands in the redevelopment district, legislative appropriations, grants, gifts, and other funds; creates the Waiakea Peninsula Redevelopment District on the island of Hawai'i, the Waiakea Peninsula Redevelopment District Planning Committee, and the Waiakea Peninsula Redevelopment District Revolving Fund; and appropriates an unspecified sum of

general funds for FY 21 for deposit into the revolving fund and an unspecified sum of revolving funds for FY 21 for redevelopment of the Waiakea Peninsula District.

As a matter of general policy, the department does not support the creation of any revolving fund which does not meet the requirements of Section 37-52.4, HRS.

Revolving funds should: 1) serve a need as demonstrated by the purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining.

In regards to H.B. No. 2578, H.D. 1, it is difficult to determine whether the proposed source of revenues will be self-sustaining for each revolving fund that is created.

Thank you for your consideration of our comments.



HB2578 HD1
RELATING TO PUBLIC LANDS
Ke Kōmike Hale o ka ‘Oihana ‘Imi Kālā

Pepeluali 21, 2020

12:00 p.m.

Lumi 308

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB2578 HD1, highlighting concerns and offering amendments to 1) address provisions that could allow for extremely long-term, multigenerational leases of public lands, including public land trust and “ceded” lands; 2) ensure a proper accounting of public land revenues potentially subject to percentage set asides for OHA and the Department of Hawaiian Home Lands (DHHL); and 3) ensure that any reductions or waivers of rent for the demolition of improvements or provision of infrastructure appropriately account for OHA’s and DHHL’s potential shares of revenues, and are commensurate with the actual value such activities would provide for the State.

1. The long-term, multigenerational leases that could be issued for the Waiākea and future legislatively designated redevelopment districts may inhibit the State’s fiduciary obligations under the public trust and the public land trust, and may lead to the sale of public and “ceded” lands.

First, OHA notes that this measure could lead to extremely long-term, multigenerational public land leases that substantially inhibit the State’s ability to uphold its fiduciary obligations to Native Hawaiians and the public. Under Article 11, section 1 of the Hawai’i State Constitution and Chapter 171, Hawai’i Revised Statutes (HRS), the State, through the Board of Land and Natural Resources (BLNR), holds in trust approximately 1.3 million acres of public lands, including the natural and cultural resources they contain, for the benefit of present and future generations. Much of these lands are also subject to the public land trust created by Article 12 of the Hawai’i State Constitution and section 5(f) of the Admission Act, which require that a portion of revenues derived from public land trust lands be dedicated to OHA, for the purpose of bettering the conditions of Native Hawaiians. The trust statuses of these lands impose upon the BLNR specific fiduciary obligations of due diligence and undivided loyalty, in making its trust corpus productive and maximizing its benefits for the trust’s Native Hawaiian and public beneficiaries. **By authorizing redevelopment district planning committees to issue, renew, or renegotiate public land leases in designated redevelopment districts “notwithstanding any law to the contrary” – including, potentially, laws under Chapter 171 limiting lease lengths and lease extensions for public lands – this measure may invite the creation of century-long leasehold interests that substantially inhibit the BLNR and future generations from ensuring the best and most appropriate uses of public trust and public land trust lands, which may otherwise provide much greater benefits to both Native Hawaiians and the public.**

Second, in addition to tying the State's and future generations' hands in ensuring the appropriate disposition of public trust and public land trust lands, the long-term leases that would be authorized under this measure may lead to a sense of entitlement amongst lessees that can result and has resulted in the sale of public lands, including "ceded" lands to which Native Hawaiians have never relinquished their claims. **OHA objects to the sale or alienation of "ceded" lands except in limited circumstances and has significant concerns over any proposal that may facilitate the diminution of the "ceded" lands corpus.**

Accordingly, should the Committee choose to move this measure forward, OHA strongly recommends amendments to protect against the creation of extremely long-term leasehold interests and the issuance, renewal, or renegotiation of other lease terms that may compromise the State's fiduciary obligations to Native Hawaiians and the public. To this end, OHA respectfully offers language to ensure that any redevelopment district planning committee follows the general public land lease safeguards found in HRS § 171-36, unless and until a redevelopment committee adopts, in the transparent chapter 91 rulemaking process, administrative rules to specifically replace the provisions in HRS § 171-36:

By amending page 9, lines 8-13, to read as follows:

"(4) Notwithstanding any other law to the contrary, lease public lands in a designated district and renew or renegotiate any lease in connection with any project contained in the redevelopment plan for the designated district, on terms and conditions pursuant to section 171-E and consistent with the redevelopment plan, provided that any new, renewed, or renegotiated leases shall be subject to the terms, conditions, and restrictions found in section 171-36 for the leasing of public lands, unless otherwise specifically provided in administrative rules adopted pursuant to chapter 91."

2. Redevelopment district and redevelopment area revenues should account for the constitutional shares of OHA and DHHL.

While OHA appreciates this measure's apparent intent to have some portion of redevelopment district revenues to be recommitted to the activities of the district, OHA does express concern regarding language that may inadvertently fail to account for the percentage of revenues from certain public lands that must be set aside for transfer to OHA and DHHL. Specifically, the allocation of fifty percent of redevelopment district public land revenues into redevelopment district revolving funds, "notwithstanding section 171-19," may result in the failure to account for the shares of OHA and DHHL under the public land trust and Hawaiian Homes Commission Act, as specifically noted in that section. Similar language in this measure regarding revenues specifically generated from public lands in the Waiākea peninsula redevelopment district also raises the same concerns.

Moreover, absent express statutory notice, this measure's contemplated authorization of county-based local redevelopment agencies to negotiate development agreements for state-held public lands could also result in negotiated agreements that fail to account for OHA's and DHHL's shares.

Accordingly, OHA respectfully urges amendments that would provide explicit statutory acknowledgement and notice to redevelopment district and redevelopment area decisionmakers and participants, regarding the need to account for OHA's and DHHL's share of certain public land revenues:

By amending page 15, lines 3-5, to read as follows:

"(1) Notwithstanding section 171-19, and subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959, fifty per cent of the revenues, income, and receipts of the department from the public lands in the designated district;"

By amending page 17, line 6, to read as follows:

"(1) Subject to the Hawaiian Homes Commission Act of 1920, as amended, and section 5(f) of the Admission Act of 1959, fifty per cent of the revenues, income, and receipts"

And by amending the language found on page 27, lines 10-12, to read as follows:

"(1) Describe the land subject to the development agreement, including the location, area, and size of the land, and whether the land is subject to section 5(f) of the Admission Act of 1959 or section 1 of the Hawaiian Homes Commission Act of 1920, as amended;"

3. Rent reductions or waivers for public land leases that require the removal of improvements should be applied only after the set aside of the amounts to which OHA and DHHL may be entitled, and rent reductions or waivers for the provision of infrastructure should be commensurate with the equity in such improvements to be recaptured by the State.

Finally, OHA appreciates this measure's intent to provide the Board of Land and Natural Resources with flexibility in adjusting or waiving lease rent, based on a lessee's investments in removing old improvements or installing basic infrastructure. However, OHA notes that reductions in rent to facilitate the removal of old or dilapidated improvements that the State, as a prudent landowner and fiduciary, should have required of previous lessees, should not diminish public land revenue amounts to which OHA or DHHL would be otherwise entitled. As noted above, the State holds specific fiduciary obligations in its administration of lands,

including public trust lands and “ceded” lands, with Native Hawaiians and the public as specifically named beneficiary classes. A failure on the State’s part to apply basic principles of due diligence and prudence in requiring previous lessees to remove old and unwanted improvements should not be used to reduce the benefits that would otherwise be realized by its beneficiaries. Accordingly, OHA respectfully requests amendments that ensure that any reduction or waiver in rent for lessee’s removal of improvements take place only after the set aside of amounts to which OHA and DHHL may be entitled.

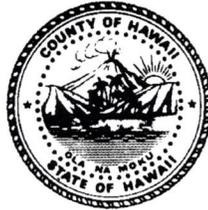
In addition, OHA notes that in some instances, rent reductions or waivers of up to 20 years may approach or exceed the useful life of certain types of infrastructure installed by lessees. In such cases, the full benefit of such infrastructure would be realized by lessees, with little to no equity left for the State to have justified its reduction or waiver of lease rent. Accordingly, OHA respectfully requests amendments that would ensure a consideration of the useful life of installed infrastructure in the reduction or waiver of rent, so that any reductions or waivers are commensurate with the benefits that would be realized by the State.

Accordingly, OHA recommends amending the language found on page 20, lines 3-13, to read as follows:

“provided further that if a lease for resort, commercial, industrial, other business, or residential purposes requires a lessee to demolish existing improvements or provide basic infrastructure including drainage, sewer, water, electricity, and other utilities before the lessee can make productive use of the land, the board may approve a reduction or waiver of lease rental for a period of up to twenty years that shall not exceed the amount of the lessee’s total expenditures for demolition or provision of the infrastructure or the value of the remaining useful life of the infrastructure at the end of the lease term, whichever is less, and provided that any reduction or waiver of lease rental for the demolition of existing improvements shall not reduce or waive any lease rent amounts required to be set aside or transferred pursuant to section 5(f) of the Admission Act of 1959 or section 1 of the Hawaiian Homes Commission Act of 1920, as amended;”

Mahalo for the opportunity to testify on this measure.

Harry Kim
Mayor



Roy Takemoto
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February 19, 2020

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair
Committee on Finance

Dear Chair Luke, Vice Chair Cullen, and Committee Members:

RE: HB 2578, HD1 Relating to Public Lands

Thank you for this opportunity to comment on HB 2578, HD1, as it would impact the Waiakea Peninsula in Hilo, Hawai'i.

We support any legislation that will help the revitalization of Banyan Drive and the rest of the Waiakea Peninsula. Virtually everyone familiar with this area agrees that it is underutilized and in disrepair. It is the center of tourism in East Hawai'i, but it is a jewel that is quite tarnished at the present time.

Hawai'i County has taken first steps toward revitalizing the peninsula, including the creation of the Banyan Drive Hawai'i Redevelopment Agency (BDHRA); and a conceptual master plan has been created as a starting point. But funds are needed to conduct the environmental impact statements necessary to complete the redevelopment plan and move forward, and those monies are not available.

Under HB 2578, HD1, DLNR would create a new planning committee to oversee Banyan Drive and would require that BDHRA be disbanded. This might mean going back to square one, but the tradeoff is that the bill presumably will provide meaningful funding using current DLNR revenues.

Although we may not agree with all provisions of HB 2578, HD1, we support a measure that directs resources, both statutory and financial, toward the redevelopment of Banyan Drive while providing some local perspective in decision-making.

Therefore, we ask that you act favorably on HB 2578, HD1, so that a resolution can be hammered out in conference.

We also wonder whether there would be any point in reconvening Conference Committee on HB 1219, which is another bill dealing with these issues. The electronic record does not indicate that the conferees on HB 1219 were ever discharged.

Respectfully Submitted,

Harry Kim
MAYOR

TAX FOUNDATION OF HAWAII

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SUBJECT: GENERAL EXCISE, Exemption for Redevelopment of Public Lands

BILL NUMBER: HB 2578, HD-1

INTRODUCED BY: House Committee on Water, Land, & Hawaiian Affairs

EXECUTIVE SUMMARY: Authorizes the designation of areas or regions of public lands classified as commercial, industrial, resort and hotel, and the establishment and implementation of guidelines for the redevelopment of the areas or regions. Designates the public lands on the Waiakea peninsula on the island of Hawaii as the Waiakea Peninsula Redevelopment District. Allows the Board of Land and Natural Resources to issue a rent reduction or waiver for certain lessees' expenses for demolition or provision of basic infrastructure. Authorizes a local redevelopment agency to contract with a developer for construction of non-residential projects on public land within a redevelopment area. Exempts the costs of construction of work or improvements of a redevelopment project from general excise and use taxes. Takes effect upon the County of Hawaii repealing the Banyan Drive Hawaii redevelopment agency. Makes an appropriation.

SYNOPSIS: As it relates to taxation, section 11 of the bill adds a new section to chapter 237, HRS, to establish a GET exemption for amounts received from the construction of work or improvements of a redevelopment project.

"Construction of work or improvements of a redevelopment project" includes any costs of design, engineering, labor, and materials associated with the demolition and construction of a redevelopment project that is part of the redevelopment plan adopted by a local redevelopment agency pursuant to chapter 53.

"Redevelopment project" has the same meaning as in section 53-1, HRS.

Section 12 of the bill amends section 238-1, HRS, to add a corresponding exemption from Use Tax.

EFFECTIVE DATE: July 1, 2050.

STAFF COMMENTS: This bill's preamble recites that because of the policies guiding the management of public lands with commercial, industrial, resort, and hotel uses, there has been little incentive for lessees to make major improvements to their infrastructure, resulting in the deterioration of infrastructure and facilities. The lack of improvements in many of these areas has resulted in dilapidation, deterioration, or obsolescence of buildings and structures. The bill then establishes a committee to take on the planning work and then, almost as an afterthought, exempts the redevelopment project from GET.

We question whether this situation justifies an exemption from tax. Has there been any showing of need for tax relief?

The tax system is there to raise revenue to keep the government moving. Using tax exemptions indiscriminately throws the revenue raising system out of whack, making the system less than reliable as there is no way to determine how many taxpayers will avail themselves of the exemption and in what amount.

Furthermore, tax exemptions are nothing more than the expenditure of public dollars, but out the back door. If, in fact, these dollars were subject to the appropriation process, would legislators be as generous about the expenditure of these funds when our kids are roasting in the public school classrooms, there isn't enough money for social service programs, or our state hospitals are on the verge of collapse?

Digested 2/19/2020

LATE

HB-2578-HD-1

Submitted on: 2/21/2020 7:19:40 AM

Testimony for FIN on 2/21/2020 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
James McCully	Individual	Support	No

Comments:

Aloha Chair Luke

HB 2578 specifically addresses the redevelopment of already improved state lands. It's critical that we understand the issues that this bill seeks to resolve, namely how do we "renew" existing uses on public lands while they are under an existing lease. A thoughtful review suggests that a modern approach to land use controls, as represented by public land leases, requires more flexibility than the current statutes or department policies allows.

This bill allows for a "home rule" approach to the specific areas, such as Hilo's Banyan Drive, that currently are blighted by a uniform state policy. Public lands that are not used on an optimal basis are an obvious waste of our resources and statutory language that can correct these deficiencies is sorely needed. This bill could begin to address these long standing issues.

Please support HB2578

Mahalo,

Jim McCully